**Blue Arrow, Inc., a subsidiary of Kysor Industrial Corporation *and* Theodore McCartney.** Case 7–CA–17913

May 14, 1982

## DECISION AND ORDER

### BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On September 3, 1981, Administrative Law Judge Joseph M. May issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge, as modified herein, and to adopt his recommended Order, as modified herein.[1]

While we agree with the Administrative Law Judge that Respondent's discharge of McCartney constituted a violation of Section 8(a)(3) of the Act, we note that there are several noncritical inaccuracies in his statement of facts.[2] However, in adopting the Administrative Law Judge's 8(a)(3) conclusion, we rely on the clear evidence in the record that McCartney was an aggressive union steward, that Respondent was familiar with his union activities, and that Respondent had labeled McCartney a troublemaker and was seeking a way to fire him. In particular, the record evidence demonstrates that Respondent's real motive in discharging McCartney was not his pay claim but his union activity. McCartney was actually at the Pontiac plant delivering for 1 hour 36 minutes; he stated on his pay claim that he was there for 3 hours, a difference of 1 hour 24 minutes. Employee Capps, on an earlier run, had been at the Pontiac plant delivering for 45 minutes, but claimed 2 hours 15 minutes, a difference of 1 hour 30 minutes. Employees Miller and Meints had made similar claims on this same Chicago-Pontiac-Flint route. In each instance, the driver claimed from the Company more time as on duty not driving than had actually been spent on duty not driving. Capps, Miller, and Meints were not disciplined for their actions; McCartney was discharged.[3] These facts establish a *prima facie* 8(a)(3) violation which Respondent failed to rebut.[4]

### CONCLUSIONS OF LAW

1. Respondent Blue Arrow, Inc., a subsidiary of Kysor Industrial Corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 332, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(3) of the Act by discharging Theodore McCartney due to his union activities.

4. The unfair labor practice found above is an unfair labor practice having an effect upon commerce within the meaning of Section 2(2), (6), and (7) of the Act.

### THE REMEDY

Having found that Respondent has engaged in an unfair labor practice within the meaning of the Act, it shall be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes and policies of the Act. As we have found that Respondent unlawfully discharged Theodore McCartney, we shall order Respondent to offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges. We shall also order that Respondent make Theodore McCartney whole for any loss of

[1] The Administrative Law Judge has recommended that a broad order issue against Respondent. However, in accordance with our decision in *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979), in which it was decided that, unless a respondent has been shown to have a proclivity to violate the Act, or has engaged in such egregious or widespread misconduct which demonstrates a general disregard for employees' fundamental rights, a broad order will not automatically be included. Therefore, we shall modify the recommended Order and notice accordingly.

[2] For example, the Administrative Law Judge states that McCartney had made the Chicago-Pontiac-Flint run three or four times. The record shows he made the run five or six times. The Administrative Law Judge states that McCartney was blamed by the terminal manager for the anonymous posting of a notice contradicting an agreement reached between the Union and the Company on the question of compensation for spot deliveries. The record does not show that the terminal manager blamed McCartney.

[3] Respondent contends that it had a policy of investigating only those claims in which a driver claimed a period of more than 2 hours on duty not driving time. Respondent argues that this is why McCartney—who claimed 3 hours as on duty not driving during the Pontiac spur—was investigated. Respondent maintains that no other driver had claimed more than 2 hours as on duty not driving and thus no others were investigated. But the record shows that on at least two occasions drivers other than McCartney had claimed periods of on duty not driving which exceeded 2 hours, and yet no investigation occurred.

[4] Chairman Van de Water would not defer to the arbitration award herein solely because no party has requested such deferral. Respondent's request to defer "to the findings of the Arbitration Committee that McCartney's conduct violated Uniform Rule 3(d)" is a request to defer to an immaterial factual finding and is therefore inappropriate. Respondent's motive for discharging McCartney was not his improper pay claim but his union activity; any ruling on whether rule 3(d) applies to that pay claim is therefore immaterial to the resolution of the issues in this proceeding.

earnings he may have suffered as a result of the discrimination against him from April 18, 1980, when he was discharged, until the date he is offered reinstatement. Backpay shall be computed with interest as prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Blue Arrow, Inc., a subsidiary of Kysor Industrial Corporation, Detroit, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or otherwise discriminating against any employee because of his or her activity on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 332, or any other labor organization.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action, which is deemed necessary to effectuate the policies of the Act:

(a) Offer Theodore McCartney immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay suffered by reason of the discrimination against him, with interest, in the manner described in the section of this Decision and Order entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT discriminate against employees because they are members of, or support, Local 332, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL offer immediate and full reinstatement to Theodore McCartney to his former position or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and WE WILL make him whole for any loss of earnings he may have suffered as a result of our discrimination against him since April 18, 1980, with interest.

BLUE ARROW, INC., A SUBSIDIARY OF
KYSOR INDUSTRIAL CORPORATION

## DECISION

JOSEPH M. MAY, Administrative Law Judge: The charge in this matter was filed by Theodore McCartney on June 19, 1980. The complaint issued on August 6, 1980, alleging that on or about April 18, 1980, Respondent discharged its employee because of his activities as

steward on behalf of Local 332, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, thereby interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act, as amended, in violation of Section 8(a)(1) which makes such conduct an unfair labor practice. Further, the discharge is alleged to constitute discrimination in the hire, tenure, or terms or conditions of employment calculated to discourage membership in a labor organization in violation of Section 8(a)(3), which defines additional unfair labor practices. In its answer to the complaint, the Respondent states that the employee was discharged for the reason that he falsified a trip report and logsheet in order to obtain pay to which he was not entitled and thereby engaged in theft and dishonesty in violation of rules and regulations applicable to all Respondent's drivers.

The proceeding was assigned to me for hearing and decision. Hearing was held in Burton, Michigan, on April 20, 21, and 22, 1981. Post-hearing briefs were filed by the General Counsel and Respondent. Respondent renews on brief its motion at the hearing that defer, in whole or in part, to the findings of an arbitration committee set forth in Joint Exhibit 2. (Because of the fact that some exhibits were offered in a different order than might have been expected, were not always properly identified on the record, and were not sponsored by expert witnesses nor, in some instances, by any witnesses, this Decision includes a table of exhibits as Appendix A attached hereto.) For reasons to be set forth below, Respondent's motion is denied. My ruling on the admissibility of Respondent's Exhibit 9 was reserved when that exhibit was offered; the admissibility of that exhibit will also be discussed below.

## Jurisdiction

Local 332, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act. Respondent is a corporation engaged in the interstate transportation of property by motor vehicle. It maintains its principal place of business at Grand Rapids, Michigan, and others at Kalamazoo, Battle Creek, and Burton, Michigan, and Chicago, Illinois. (Burton is a suburb of Flint, Michigan, and is referred to as Flint in most of the testimony and exhibits.) Respondent annually derives gross revenues in excess of $50,000 each from the transportation of freight directly to points within the State of Michigan from points outside thereof and from the transportation of freight directly to points outside the State of Michigan from points within the State of Michigan. The finding is therefore warranted that Respondent is an employer engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

## Statement of Facts

The findings of fact in this proceeding are best stated narratively, as follows: McCartney began his trucking career with the Respondent in 1968 and was an over-the-road driver from 1976 until his discharge for theft or dishonesty on April 18, 1980. For the 2 years preceding the discharge, McCartney was also the union steward for the over-the-road drivers based in Burton, Michigan. He was the only regular employee whom Respondent had ever discharged for theft or dishonesty.

During his tenure as steward, it fell to McCartney to explain to Respondent certain disagreements on the part of the drivers with the interpretation of their employment contract by the Burton terminal manager and others in responsible positions. Simple protests sometimes led to formal grievance procedures which McCartney felt obliged to initiate when management showed itself intractable. The drivers were to be paid, for example, for the time spent on duty while their vehicles were being fueled. This time would vary, however, and the fueling process was subject to delays over which the drivers had no control. Management had adopted a unilateral policy of paying the drivers for 20 minutes, regardless of the actual time consumed. A grievance filed by McCartney resolved the dispute in the drivers' favor. Next, it was McCartney's lot to complain about the routine hiring of new employees without the formal posting of notices of openings for which existing employees might be eligible. He further complained about a practice by management of pressuring drivers to forego holiday pay when applicable under the contract.

McCartney was not always successful with his complaints on behalf of the road drivers, but he pursued enough of them to cause substantial annoyance at the management level. Respondent's announced plan to change its dispatch system from a seniority system to a first-in, first-out system was designed to reduce costs and would have benefited some drivers at the expense of others. McCartney challenged it and took up the cause for his local at a general bargaining session; he failed to persuade enough other locals that they too should oppose the change, and the new system was installed.

The facilities available to over-the-road drivers at terminals away from home were a source of discontent to which McCartney frequently called management's attention. He considered the unavailability of emergency telephones after closing hour to be a serious threat to driver safety, but management responded that their installation would be too expensive. The Burton terminal provided a bunkhouse he considered unsanitary, and so he complained to the terminal manager. Inasmuch as the drivers based in Burton (for whom he was the union steward) would never have occasion to use the Burton bunkhouse, he was told that unsanitary conditions there were none of his business.

Respondent had an agreement with two local cartage companies in the Flint, Michigan, area, under the terms of which Respondent could spot at the latters' yards loaded trailers for delivery to ultimate consignees and, ultimately, pick up the empty trailers there after completion of the cartage companies' unloading and/or delivery. These "spotting" assignments were not particularly lucrative for the drivers, and so McCartney initiated negotiations between the Union and Respondent which culminated in the agreement constituting Respondent's Ex-

hibit 22 herein. The agreement provides, among other things, that the spotting driver is entitled to be paid for 1 hour at city rates and is not required to bring back an empty trailer; if he chooses to bring back an empty trailer, he is entitled to be paid a 3-hour, multiple-leg guarantee. A notice to the drivers contradicting the agreement was posted by another union official, and McCartney was blamed by the terminal manager for this contretemps.

None of these activities as union steward for the Burton road drivers (and, in the case of conditions at the Burton bunkhouse, as a steward acting *ultra vires*) endeared McCartney to Respondent's management in general or the Burton terminal manager in particular. The latter labeled him the head troublemaker and told him that he would fire him "one of these days, and make it stick." A retired driver claimed that Respondent's labor relations consultant (Thompson) told him that he had orders from top management in the Grand Rapids home office to "nail" this driver and McCartney; but Thompson denied the fact of the orders as well as the fact of the conversation, and his testimony was the more persuasive of the two.

McCartney's discharge notice, dated April 18, 1980, reads as follows: "On March 27, 1980, you violated the following company rule . . . : Uniform Rules and Regulations Rule 3 (d) Theft or dishonesty of any kind. *You showed* on your pay sheet you spent three *(3) hours delivering* when in fact you spent one hour and 36 minutes. Also your log was falsified to cover this three hours. Your conduct was not in keeping with efficient operation and we therefore find it necessary to discharge you effective this date." It is signed by the terminal manager who is quoted in the preceding paragraph. The "pay sheet" referred to in the discharge notice is not the itemized paysheet such as those introduced as Respondent's Exhibits 9, 10, 12, 14, 18, and 21. Rather, it is a company document identified on its face as a trip report; specifically it is General Counsel's Exhibit 7. The "log" referred to is a driver's daily log (G.C. Exh. 5) printed for Respondent on a form which complies with the requirements of the Motor Carrier Safety Regulations of the Federal Highway Administration, U. S. Department of Transportation. (In the transcript of testimony these documents are frequently confused with one another, and the briefs of the parties can also tend to mislead the reader; hence, this explanatory disgression and the Table of Exhibits appended hereto.) The uniform rules & regulations are contained on a single sheet introduced as Joint Exhibit 3, the full title of which is set forth in the Table. Rule 3 thereof lists certain types of punishable conduct and the penalties therefor. Rule 3(d) names theft or dishonesty of any kind as a category of conduct and prescribes as the penalty, discharge. Rule 4(a), in contrast, deals with reports and prescribes a penalty of reprimand to 3-day layoff for failure to properly make out reports and trip sheets.

Respondent's over-the-road drivers are paid on a hourly basis, with a certain number of driving hours as a daily minimum, subject to an additional payment for nondriving hours which might occur because of delays in loading, equipment failure, and other events. The trip report is a form on which the driver shows the extra time involved and the reasons for it. Thus, in addition to the trip report referred to in the notice of discharge, McCartney filed two more trip reports in connection with the eventful journey which led to his discharge. He began the day in Chicago and filled out a trip report there to claim the 30 minutes normally allowed for hooking up his tractor to the trailer he was to pull to Flint with an intermediate delivery at Pontiac, Michigan. In the space provided to identify extra duties, he wrote "1/2 hr. hookup"; and he dated the form March 26, though it was in the early hours of March 27. The next trip report, properly dated, claims "2 hours wait flat tire on (the tractor) at (location on highway) wait for service from Kalamazoo. Called Chuck's—their compressor broken—then call Terry's Tire Kalamazoo for service." Copies of these two trip reports make up General Counsel's Exhibit 6. The third report, claiming 3 hours' waiting time, explains "3 hours—Deliver load to Pontiac Motor Div.—wait for load to be taken off at plant 40 West."

The driver's daily log is prescribed by the Federal Highway Administration to insure compliance with its safety regulations governing hours of service. Drivers are limited with respect to hours worked in driving and on duty-not driving; and there are requirements for off-duty periods as well. The form is graphic, running from midnight to midnight in 15-minute segments horizontally across the page; the driver draws a line through the segments on different levels to indicate when he was off duty, driving, or on duty-not driving. Mr. McCartney's driver's daily log for March 27, 1980, shows him off duty from midnight until 3 a.m., on duty-not driving from 3 to 3:30 (while hooking up at Chicago), driving from 3:30 until 6:30 a.m. (when he experienced the flat tire), on duty-not driving until 8:30 a.m. (driving until noon, on duty-not driving at Pontiac from noon until 3 p.m. (the time period at the heart of the discharge dispute), driving from 3 p.m. until 3:45 p.m. when he checked out at the Burton terminal, and off duty from 3:45 until midnight. At the point of the disablement there is the notation "flat tire" and at Pontiac there is a two-line notation of which only the words "wait for load" are decipherable.

On April 1, 1980, the terminal manager at Burton received a call from a "Carol" in the Grand Rapids office. She asked whether 3 hours was a reasonable amount of time for a driver to claim as unloading time at the Pontiac plant.[1] The terminal manager and his subordinates checked manifests that indicated McCartney was within the plant area for 1 hour and 36 minutes. He did not ask McCartney for an explanation. Respondent's Exhibit 9 is an itemized monthly pay sheet (or recapitulation) which

[1] "Carol" did not testify. Respondent's director of personnel, however, addressed the question of why "Carol" made this call to Burton. He stated that it was company policy to pay claims of up to 2 hours' extra time routinely; and that this claim was investigated only because it exceeded 2 hours. None of the several active or retired drivers who testified knew of this "policy" and some could recall claims for more than 2 hours which were never questioned. If there were such a policy, and the drivers had been informed of it, it is conceivable that this proceeding would not have arisen.

purports to show extra earnings of $32.34 attributable to the Pontiac delivery. It was not received in evidence at the hearing because it does not show on its face that it represents earnings in 1980, and counsel was unable to establish the year independently as had been done with some of the other paysheets of record. On brief, counsel has not reoffered the exhibit, and the Administrative Law Judge declines to receive it *sua sponte*. All parties concede that, whatever the amount, McCartney was paid the extra earnings that he had claimed. Respondent's director of personnel ordered the terminal manager to discharge McCartney, if Thompson (the labor relations consultant for Respondent) were satisfied with the supporting documentation. The terminal manager consulted with Thompson without asking McCartney any questions, then entered the notice of discharge and informed McCartney orally through a subordinate, the terminal dispatcher.

Pontiac is about 45 miles from the Flint area involved. McCartney had little experience with serving this plant from Chicago. In 4 years he had had only three or four such deliveries. Not only had he not filled out the trip reports in the same way for each delivery, but other drivers also improvised when assigned this run. McCartney reached the Flint area about noon and turned off toward Pontiac. He spent 1 hour, 36 minutes at Plant 40 West, then returned to Flint in heavy afternoon traffic. The round trip between the Flint turnoff and the Pontiac plant probably took more than 3 hours. There being no discernible company policy on how to claim the extra pay earned for this delivery, McCartney decided to treat it this time as a peddle run under section 55 of the collective-bargaining agreement. He reasoned that eventually a company policy would emerge; instead, he was discharged without an opportunity to provide the rationale for his method of completing the form.

### Deference to the Arbitration Committee's Decision

Because of the clear and longstanding national policy encouraging the development of labor-management relations through collective bargaining, it has become increasingly appropriate in judicial proceedings for the courts to defer to the findings of an arbitrator acting under authority of a collective- bargaining agreement. The governing statute, however, embodies another national policy insofar as it confers specific substantive rights enforceable in proceedings before the National Labor Relations Board. As the Supreme Court has observed: "A tension arises between these policies when the parties to a collective bargaining agreement make an employee's entitlement to substantive statutory rights subject to contractual dispute-resolution procedures." *Barrentine, et al.* v. *Arkansas-Best Freight System, Inc.*, 450 U.S. 728 (1981). The Court noted that the Fair Labor Standards Act under which the *Barrentine* case was prosecuted confers rights which are not waivable; there can be no doubt that the National Labor Relations Act also deals with unwaivable rights. The question then becomes: Are the rights asserted here independent of the collective-bargaining process? If so, they are not waivable.

It is clear that the rights asserted here are the statutory rights to engage in activities proper to a union steward in the exercise of his office. The collective-bargaining process has not affected these rights but has only ordained that certain disputes arising under the collective-bargaining agreement may be resolved through arbitration. The full text of the arbitration committee's decision of May 13, 1980, appears in Joint Exhibit 2: "DECISION: The Committee finds that based upon the facts presented, the discharge of Ted McCartney under the Collective Bargaining Agreement and Rule 3(d) is upheld." We know from Respondent's Exhibit 16, McCartney's grievance report which culminated in the one-sentence decision, that McCartney did not raise the unfair labor practice issue we must consider here, but that he merely denied the two specific charges brought in the notice of discharge. As in *Pincus Brothers, Inc.*, 237 NLRB 1063 (1978), full deference may not be accorded because, at the very least, the unfair labor practice issue was not considered. Respondent's argument that the *Pincus* decision warrants deference to factual findings even where complete deference is inappropriate, can hardly prevail where, as here, there are no findings of fact but only an ultimate conclusion. Even that conclusion, it should be noted, does not rest on the expert interpretation of any specific provision of the collective-bargaining agreement, but rather on a separate rule which may not have any application to this case. Accordingly, Respondent's motion to defer to the findings of the arbitration committee is hereby denied.

### Subsidiary Findings and Conclusions

The record in this proceeding does not present a close case. Although there is a factual tangle which should be unraveled here in the interest of decisional clarity, it has to do with the proper completion of printed forms and, as will be seen, has no bearing on the issue of unfair labor practices. The notice of discharge recites two specifications of theft or dishonesty. The second specification speaks to a falsification of a driver's daily log. McCartney showed a period of 3 hours as on duty–not driving when, in fact, he was driving during at least 1 hour of this period. (The exact number of minutes is irrelevant.) As already noted, the driver's daily log is a requirement of the Federal Highway Administration and must be filled out accurately in order that that agency may be apprised of any violation of its hours-of-service regulations; it has nothing to do with theft or dishonesty between the driver and his employer. The first and only significant specification fully defines the offense as the claiming of excess extra time on McCartney's trip report. This company document is, in effect, a claim for pay believed to have been earned. A company can decline to pay and leave it to the driver to seek redress under the grievance procedure. The testimony is persuasive that trip reports were often rejected (with an explanation) and that the next move, if any, was up to the driver. In McCartney's case Respondent chose to pay the claim it thought was not justified and then discharge the employee for theft.

As noted, an intermediate delivery in connection with the run from Chicago to Flint was an unusual assignment. McCartney did not know the company's policy on how to claim the time involved and, like other drivers who testified, had improvised trip reports under different theories. This time, according to his handwritten grievance report, he determined to treat as a peddle run the round trip from the turnoff in the Flint area to Pontiac and back; and he cited article 55 of the collective-bargaining agreement. The agreement, Joint Exhibit 1, is a 168-page document over which I enjoy no interpretative expertise; neither was any expert testimony offered to assist me in interpreting this article or articles 54, 56, and 57, which are relied on in Respondent's brief. Article 55 is a clumsily worded definition of a peddle run which includes full truckload deliveries within 75 miles of a terminal. Despite the clumsy wording, it strains my credulity to accept the implication that an experienced over-the-road driver did not know the difference between a peddle run and the line haul he was obviously performing. The decision of the arbitration committee, of course, does not discuss Article 55 but points, instead, to uniform rule 3(d). A glance at Joint Exhibit 3 is enought to convince me that the applicable rule is not uniform rule 3(d) but rather uniform rule 4(a). The decision to discharge was not based on theft or dishonesty for there was none. McCartney filed an inaccurate trip report which led, but need not have led, to an overpayment estimated by counsel to be about $20. This money was not stolen; it was paid in error. The overpayment could have been avoided by Respondent on April 1, 1980, but it was not.

This extended discussion of what to some might seem trivia has been necessary because of the posture adopted by Respondent in its argument on brief. "The critical point," argues Respondent, "is that the charging party's discharge has not been causally linked to his union activities." This statement flies in the face of the record. McCartney had been labeled the head troublemaker entirely because of his union activities and had been told that he would be fired some day in a way that would be made to stick. Respondent's contention that it was the personnel director, not the terminal manager or the labor relations consultant, who had ordered the discharge, is a transparent contrivance to insulate the latter two gentlemen (those who had made the statements) from the firing process. The terminal manager was the person asked about the accuracy of the claim for extra time. The labor relations consultant was the person asked about the sufficiency of the supporting documents. The terminal manager signed the notice of discharge and informed McCartney through a subordinate. The personnel director knew that the company had never before alleged theft or dishonesty when dealing with an inaccurate trip report. Respondent is not so large a company, nor is Grand Rapids so far from Flint, as to make credible the assertion that the personnel director in Grand Rapids was unaware that the Burton terminal manager was having trouble with the local union steward. In an administrative forum, causalty may, indeed must, be inferred from findings of fact, because the forum is ill-equipped to probe states of mind. Here, not one nor two, but each and every fact recited above is indicative of the causal connection airily denied by Respondent. I conclude that such connection is inescapable.

Alternatively, Respondent argues that even if union activity were shown as one motivating factor in the discharge, the same decision would have been reached absent any union activity; and both parties rely on the leading case of *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), in support of their opposing views. There is no need here to discuss *Wright Line* and related decisions. The evidence will support the conclusion that McCartney was discharged because of his union activity. It will not support any conclusion that he was discharged for theft or dishonesty. He was discharged because in his capacity as union steward he was a thorn in the side of management; there was no dual motivation. Management was prepared to seize upon any pretext to discharge McCartney; and it determined that the filing of an inaccurate trip report was sufficient for its purpose. I conclude instead that the filing of an inaccurate trip report was not a dischargeable offense. It certainly did not constitute theft or dishonesty. I conclude that, lacking any other forum, McCartney filed the inaccurate trip report to force management's hand to declare how management thought that extra time for an intermediate delivery on a Chicago-to-Flint run should be claimed. Had management committed itself to one particular method, McCartney or any other member of the local would have been able to challenge the method in a grievance proceeding under the agreement. This procedure would have led, ultimately, to settlement in binding arbitration without the intervention of this unfair labor practice proceeding. Clearly, Respondent did not wish to travel this route.

Upon consideration of all the evidence of record, I find that Respondent has engaged in an unfair labor practice by its discharge of McCartney for his union activity, thereby coercing other employees and discouraging membership in a labor organization; and that Respondent should be required to cease and desist from such practices and to restore the charging party to his prior position in accordance with the attached order.

## CONCLUSIONS OF LAW

1. The Respondent, Blue Arrow, Inc., a subsidiary of Kysor Industrial Corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has engaged and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]

## APPENDIX A

### Table of Exhibits

*Exhibits Offered Jointly:*

1. National Master Freight Agreement and Central States Area Over-the-Road Supplemental Agreement for the period April 1, 1979, to March 31, 1982.

2. Decision of Joint State Arbitration Committee in Case No. 329, dated May 13, 1980, and other cases not pertinent here.

3. Employers' Uniform Rules and Regulations Governing Actions of Road Drivers and others promulgated under authority of exhibit 1, above.

4. Motor Carrier Safety Regulations of the Federal Highway Administration, U.S. Department of Transportation (49 CFR 390–397), in copy form provided by American Trucking Associations, Inc.

*General Counsel's Exhibits:*

1. The "formal documents," including: the original charge of June 19, 1980; an affidavit of its service, dated June 20, 1981; the original complaint and notice of hearing with summary of Board procedures attached, dated August 6, 1980, and an affidavit of service bearing the same date; the Respondent's answer to the complaint, dated August 20, 1980; the original order rescheduling hearing and an affidavit of its service, both dated August 27, 1980; the original notice of hearing location and an affidavit of its service, both dated April 14, 1981; and an index.

2. Employer's discharge notice to employee, dated April 18, 1980.

3. Two sample driver's daily logs prepared by the Charging Party (driver McCartney).

4. Two more sample driver's daily logs prepared by driver McCartney.

5. McCartney's driver's daily log for March 27, 1980.

6. McCartney's trip reports for March 26, 1980 and March 27, 1980 (flat tire).

7. McCartney's trip report for March 27, 1980 (showing 3 hours' waiting time at Pontiac plant).

8. Driver Capps driver's daily log and trip reports for a Flint-Chicago-Pontiac-Flint run on October 3, and October 4, 1978.

9. Driver Miller's driver's daily log for a September 11, 1979, run to Pontiac.

10. Driver Miller's driver's daily log for a January 10, 1980, run to Pontiac.

*Respondent's Exhibits:*

1. Memorandum presented at the hearing in support of motion to defer to the decision of the arbitration committee.

2. Employer's September 1978 memorandum to all drivers relating to the DOT requirement that driver's daily logs include the explanation for hours logged as "on duty, not driving."

3. McCartney's driver's daily log for February 28, 1980.

4. McCartney's trip report for February 28, 1980.

5. McCartney's driver's daily log for March 7, 1980.

6. McCartney's driver's daily log for March 8, 1980.

7. McCartney's trip report for March 7, 1980, serial 258827.

8. McCartney's trip report for March 7, 1980, serial 258828.

9. McCartney's itemized paysheet, March (no year). Not received in evidence.

10. McCartney's itemized paysheet, February 1980.

11. McCartney's driver's daily log for September 28, 1979, and trip report for September 27, 1979.

12. McCartney's itemized paysheet, September 1979.

13. McCartney's driver's daily log for August 14, 1979, and trip report for August 13, 1979.

14. McCartney's itemized pay sheet, August 1979.

15. Blue Arrow mileage/guarantee chart for road drivers showing earnings for various runs completed on October 1, 1979.

16. McCartney's grievance report of April 22, 1980.

17. Driver Meints' driver's daily log for October 9, 1979, and trip report for October 8, 1979.

18. Driver Meints' itemized paysheet, October 1979.

19. Driver Meints' completed driver's daily log for a hypothetical situation on a test given May 21, 1976.

20. Blue Arrow, Inc., driver manual.

21. Driver Miller's itemized pay sheet, January 1980.

22. Road drivers' agreement with Blue Arrow defining obligations for spotting trailers at two yards in the Flint area and method of compensation for such work.